

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

STEPHAN H. WHITT,

Petitioner,

CASE NO. 2:12-CV-731

JUDGE JAMES L. GRAHAM

Magistrate Judge Elizabeth A. Preston Deavers

v.

WARDEN, LEBANON CORRECTIONAL
INSTITUTION,

Respondent.

OPINION AND ORDER

On December 3, 2012, the Magistrate Judge issued a *Report and Recommendation* recommending that Respondent's *Motion to Dismiss* this action as unexhausted, Doc. 16, be granted, and that Petitioner's *Request for a Stay and Motion to Dismiss Counts 1, 3, and 4 of the Indictment*, Docs. 1 and 10, be denied. The Magistrate Judge denied Petitioner's *Request for Appointment of Counsel*, Doc. 19, and Petitioner's *Motion for a Stay*, Doc. 20. On February 5, 2013, pursuant to this Court's order, Respondent filed a *Supplemental Return of Writ* indicating that the Ohio Court of Appeals had dismissed Petitioner's post-conviction petition for want of prosecution, but that his appeal remained pending in the Ohio Supreme Court. Respondent again requested dismissal of this action as unexhausted. Doc. 33. However, on April 24, 2013, the Ohio Supreme Court dismissed Petitioner's post-conviction appeal. The Court takes judicial notice of the docket of the Ohio Supreme Court, which is a matter of public record. *See* Fed. R. Evid. 201(b)(2) ("The court may judicially notice a fact that is not subject to reasonable dispute because it . . . can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned."); Fed. R. Evid. 201(c)(1) (The court . . . may take judicial notice on its own . . ."); *McGehee v. United States Army Corps of Engineers*, 508 F.App'x 368, 370 (6th

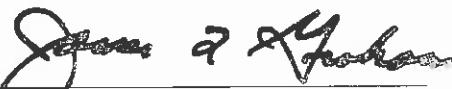
Cir. 2012) (taking judicial notice of state-court filings, noting that such filings "are public records and properly noticed").

Accordingly, the *Report and Recommendation*, Doc. 22, is adopted in part. Respondent's *Motion to Dismiss* and *Supplemental Motion to Dismiss*, Docs. 16 and 33, are denied. Respondent is directed to file a response to the Petitioner's claims within fourteen (14) days, attaching as supplemental exhibits any relevant documents from the Ohio courts.

Petitioner's *Request for a Stay*, *Motion to Dismiss Counts 1, 3, and 4 of the Indictment*, and *Motion to Dismiss Respondent's Motion of Dismissal*, Doc. 1, 10, and 23, are denied. Petitioner's *Motion to Proceed in forma pauperis on Appeal*, Doc. 29, is denied without prejudice to renewal upon the filing of an appeal.

IT IS SO ORDERED.

Date: August 27, 2013



JAMES L. GRAHAM
United States District Judge